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Office of the R.L.A.

Section 1 of the Act of the Legisla ure of Louisiana which has been declared invalid by the Supreme Court of America provides as follows .-

> That every person, firm, association or corporation, domestic or foreign, engag d in the business of selling, or making any charge for, advertising or for advertisements, whether printed or published, or to be printed or published, in any newspaper, magazine, periodical or publication whatever having a circulation ofmore than 20,000 copies per week, or displayed and exhibited, or to be dis;layed and e hibited by means of moving pictures, in the State of Louisiana, shall, in a dition to all other taxes and licences levied and ass ssed in this State, pay a licence tax forthe privilege of engaging in such business in this State o two per cent(2 per cent) of the gross receipts of suc business."

The advertisement tax levied on newspapers under the a bove provision was declared invalid by the Supreme Court in view of the First Amendment and the Fourteenth Amendment to theFederal Constitution. The First amendment to the Federal Constitution provides; "Congress shall makeno law ... abridging the freedom of the speech or ofthe press." The Fourteenth Amendment provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of theUnited States; and nor shall any State deprive any person oflife, liberty or property without due process of law." The Supreme Court held that by the First Amendment it was meant to preclude the National Government, andby theFourteenth Amendment to preclude the States, from adopting any form of previous restraing upon printed publications, or their circulaton, including that which had been effected by the two well-known and odious methods, namely, thelevy of stamp tax on all newspapers and magazines and advertisement tax.

2. Under the Government of India Act, 1935, which is the Constitution which governs India today, there are no provisions like the First Amendment and the Fourteenth Amendment of the American Constitution.

Under that Act, express power has been given to levy tax on advertisements. See entry 48 in List II in the Seventh Schedule to the Government of India Act. 1935. The decision of the Supreme Court of America will not, therefore, come in the way of the levy of an advertisement tax in India.

3. As regards theposition under the draft Constitution, Article 18 which appears in Part III relating to fundamental rights, guarantees to every citizen the right to freedom of speech and expression, There is no express mention of the right of the Press to freedom of expression but while speaking on the Article the Honourable Mr. Ambedkar statedthat the editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression and t herefore no special mention is necessary of the freedom ofthepress at all". Construed thus Article 13 gives to the press the right to freedom of expression and if that Article had xx stood alone it would have been possible to interpret it in the light of thejudgment of theSupremee Court ofAmerica as excluding the power of any legislature in India to enact a law for levying advertisement tax but in view of the entry "tax on advertisements" in List II State List, the position becomes doubtful. In virtue of the provisions of Article 217 the Legislature of any State forthe time being specified in Part I orPart III of the First Schedule has the exclusive power to makelaws forsuch State or any part thereof with respect to any of the matters enumerated in List I and consequently the levy of an advertisement tax under a State Enactment wouldappear to be competent. From the Press Reports it appears that the entry "tax on advertisements" might be ultimately included in the Union List. Whether theentry appears in the State List or the Union List power to pass an enactment for the levy

of an advertisement tax will vest in the appropriate Legislature under Article 217 and it would be possible to hold that the fundamental right of freedom of expression given by Article 13 to the Press is overriden by the express power given later on in the Constitution by Article 217 x in so far as the levy of an advertisement tax is concerned.

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The above view is confirmed by threating given by the Hon'ble President at the Constituent Assembly on the question of the validity of the advertisement tax in view of Article 13.

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